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SUBJECT: DRC: 2009 INVESTMENT CLIMATE STATEMENT

REF: STATE 123907

¶1. (U) Per reftel, following is the text of the Investment Climate Statement for the DRC for 2009.

OPENNESS TO FOREIGN INVESTMENT

¶2. (U) The DRC's rich endowment of natural resources, large population size (approximately 65 million) and generally open trading system provide significant potential opportunities for U.S. investors. At the same time, the DRC remains a highly challenging environment in which to do business. For the past two years, the World Bank's Doing Business report rated the DRC as the most difficult country in the world in which to do business. Underdeveloped infrastructure, inadequate contract enforcement, limited access to credit, continued insecurity in the eastern part of the DRC, lack of adequate property rights protection, and high levels of both bureaucracy and corruption continue to constrain private sector development.

¶3. (U) Since the democratic Presidential, Parliamentary and provincial elections in 2006, the Democratic Republic of the Congo (DRC) has continued to make progress, albeit slowly, in addressing the country's significant political, economic, and social challenges.
The DRC seeks to attract foreign investors in order to boost production and increase economic growth. Congolese investment regulations, codified in the Investment Code, do not discriminate against foreign investors, except in some specific cases dealing with labor and related taxes. To overcome previous hurdles and to simplify and facilitate investment, the GDRC has created a one-stop agency called the National Agency for Investment Promotion (ANAPI). This agency is using provisions of the new Investment Code to work to simplify new investments and to make the procedure more transparent.

¶4. (U) Broadly, there are no formal limits or screening mechanisms imposed upon foreign ownership of businesses in the DRC. Small businesses, however, are still subject to the presidential decrees number 79-021 of August 2, 1979 and number 90-046 of August 8, 1990, which prohibit foreign investors from engaging in retail commerce. The processes of granting permits and licenses in the mining and telecommunication sectors often suffer from arbitrariness, lack of transparency, and corruption.

¶5. (U) All investors in the DRC suffer from multiple audits by various government enforcement agencies seeking evidence of violations of tax laws or price controls. Foreigners and Congolese alike suffer the consequences of nonfunctional judicial institutions. The inadequate physical infrastructure - including internal transportation, energy, and social infrastructure - is a result of years of civil war and literally decades of mismanagement, negligence, and a lack of clear public policies in the infrastructure sector. International donors and a recently

concluded multi-billion dollar Sino-Congolese agreement will provide critically needed resources for infrastructure development, but constraints will exist in the short-term.

¶6. (U) Restructuring of approximately 60 Congolese parastatals, including perennial money losers such as the national electricity (SNEL), river transportation (ONATRA) and rail (SNCC) companies, continues, though slowly. The GDRC acknowledges the need for reform and the Portfolio Ministry continues to work to improve the situation. The government and state-owned Societe Nationale d'Electricite (SNEL) have begun to open the energy sector to private investment.

¶7. (U) The DRC's economic environment changed dramatically during the course of 2008 as a result of the impact of the global financial crisis in the final quarter of the year. Earlier, double-digit GDP growth projections for 2008, forecast as recently as October, have been revised downward to 8 percent. GDP growth for 2009 is projected at below 5 percent. The once robust mining sector significantly contracted towards the end of the year due to falling international commodities prices, a tightening of international credit, and dampened investor confidence in the sector.

CONVERSION AND TRANSFER POLICIES

¶8. (U) The DRC adopted a freely floating exchange policy in 2001 as part of the implementation of broader economic reforms. The DRC has also lifted restrictions on business transactions nationwide. International transfers of funds take place freely when transacted through a local commercial bank. The bank declaration requirement and payments for international transfers now take less than one week to complete, on average.

¶9. (U) The Congolese franc had remained relatively stable for the past several years because of the GDRC's tight monetary policy. However, the Congolese franc has recently experienced increasing volatility due to the impact of the global financial crisis on the DRC's economy. In 2008, the Congolese franc depreciated by 27 percent on the official market. The largest banknote currently in circulation is the 500 Congo franc note; larger denominations (1,000 Congo francs and 5,000 Congo francs) may be put into circulation in ¶2009. The only currency restriction imposed on travelers is a USD 10,000 limit on the amount an individual can carry when entering or leaving the DRC. The DRC's economy remains highly dollarized.

EXPROPRIATION AND COMPENSATION

¶10. (U) There have been no expropriation actions against U.S. citizens in the recent past. Post is aware of a number of existing claims against the GDRC that date from 1991 to 2002, some of which were taken to arbitration (see Dispute Settlement section below). Arbitration judgments against the GDRC, however, have not been paid in a timely manner, if at all. There are no laws forcing local ownership, although parastatal companies involved in the petroleum and mining sectors maintain minority shares of most foreign-owned projects.

¶11. (U) A recently completed GDRC review of 61 mining contracts between DRC public enterprises and private companies between 1997-2002 was plagued by numerous delays and a lack of transparency. Many of the largest foreign investors did not reach agreement with the GDRC during the review process and continue negotiations. A recent review of concessions in the logging sector aimed at cleaning-up corruption in the sector resulted in the cancellation of approximately two-thirds of the over 150 timber logging contracts.

DISPUTE SETTLEMENT

¶12. (U) The U.S.-DRC Bilateral Investment Treaty (BIT) provides for International Center for Settlement of Investment Disputes (ICSID) reconciliation or binding arbitration in the case of investment disputes. A number of U.S. firms pursued claims against the GDRC for damages resulting from civil disturbance by military mutinies in 1991 and 1993. Two investors have won settlements from the ICSID.

In early 2004, a claimant under the BIT won a settlement from ICSID but has not yet collected payment from the GDRC. The other investor, who successfully collected the compensation awarded by ICSID, received damages in 1999.

¶13. (U) On paper, the DRC's official policies are satisfactory and even attractive to business, but in recent years they have often been inoperative in practice due to problems with the judicial system. Courts are marked by a high degree of corruption, public administration is not reliable, and both expatriates and nationals are subject to selective application of a complex legal code. Official channels often do not provide direct and transparent recourse in the event of property seizure, for which legal standing can rarely be determined. Seizures have been made via the police and/or military, often supported by questionable decisions from the courts. Foreign enterprises may have slightly better security of ownership due to the presence and intervention of their diplomatic missions. Many Congolese business contracts provide for external arbitration, but this is an expensive and time-consuming option with little value for resolving routine, day-to-day business problems.

¶14. (U) In 2008, the DRC established commercial courts in Kinshasa and Lubumbashi for the first time, with additional commercial courts scheduled to be established shortly in the remaining DRC provinces. These courts are slated to be led by professional judges with expertise in commercial matters and may assist investors address commercial claims within an otherwise inadequate judicial system.

PERFORMANCE REQUIREMENTS AND INCENTIVES

¶15. (U) The new DRC Investment Code is a simplified and improved version of its predecessor. Although there are no specific performance requirements for foreign investors, there are investment conditions that must be agreed upon with the GDRC. These conditions are discussed and agreed upon initially with the DRC investment agency, ANAPI, which assures equitable treatment and procedures for all qualified foreign investments. The DRC has shortened this agreement procedure to approximately 30 days, and has created a number of incentives to attract foreign investment to the country. Pro-business incentives range from tax breaks to duty exemptions granted for three to five years, and are dependent upon the location and type of enterprise, the number of jobs created, the extent of training and promotion of local staff, and the export-producing potential of the operation. The Ministry of Labor controls expatriate residence and work permits. For U.S. companies, the BIT assures the right to hire staff of their choice to fill some management positions, but the companies agree to pay a special tax on expatriate salaries.

¶16. (U) Performance requirements agreed upon initially with ANAPI include a timeframe for the investment, the use of Congolese accounting procedures and periodic authorized GDRC audits, the protection of the environment, periodic progress reports to ANAPI, and the maintenance of international and local norms for the provision of goods and services. The investor must also agree that all imported equipment and capital will remain in place for at least five years. There is no discriminatory or excessively onerous visa, residence or work permit requirement designed to prevent or discourage foreigners from investing in the DRC.

¶17. (U) According to the terms of the Investment Code, the GDRC may require compliance with an investment agreement within 30 days of notification. Continued violations of an agreement may result in sanctions, including repayment of benefits received (such as tax exemptions) and eventual nullification of the agreement.

¶18. (U) In the case of a dispute between a U.S. investor and a GDRC agency, the investor is subject to the Congolese civil code and legal system. If the parties cannot reach agreement, under the terms of the U.S.-DRC BIT the dispute is taken to the ICSID or to the Paris-based International Chamber of Commerce (ICC).

¶19. (U) GDRC public administration reforms implemented since 2002 have allowed foreign investors to bid on government contracts just as domestic investors, with no discriminatory terms. Foreign firms may even be favored in the bidding process because they can more easily access and present international insurance funding

guarantees. With the sponsorship and technical assistance of the World Bank, a tender board now works under the supervision of the Ministry of Budget. Normally, however, public companies and/or parastatals do not participate in the bidding process, due to the financing guarantees required beforehand. In addition, contracts are often negotiated directly with the GDRC, not through an international tender process, thus reducing transparency.

RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

¶20. (U) The recently approved DRC Constitution (chapter 2, articles 34-40) protects private ownership without discrimination between foreign and domestic investors. It also protects investments against takeover, unless the investment conflicts with some overriding public interest. In this case, there are legal provisions for equitable and appropriate compensation for the parties involved.

¶21. (U) The GDRC has restricted one category of small businesses to Congolese nationals. This covers artisanal production sector activities, small public transport firms, small restaurants, and hotels with fewer than ten beds. Despite GDRC restrictions, some foreign-owned small retailers, particularly Chinese-owned stores, have recently appeared on the market.

PROTECTION OF PROPERTY RIGHTS

¶22. (U) Despite the new DRC Constitution and attempts to enforce existing legal provisions, protection of property rights remains weak and dependent upon a currently dysfunctional public administration and judicial system. Some senior-level officials are making efforts to restore and improve the legal and administrative frameworks, but the challenge remains to implement these changes at a practical level.

¶23. (U) Ownership interest in movable properties (e.g. equipment, vehicles, etc.) is secured and registered through the Ministry of the Interior's Office of the Notary. Real estate property (e.g. buildings and land) is secured and registered at the Ministry of Land's Office of the Mortgage Registrar.

¶24. (U) In principle, intellectual property rights are legally protected in the DRC. However, this protection does not always exist in practice. The country is a signatory to a number of international agreements with organizations such as the World Intellectual Property Organization (WIPO), and the Paris Convention for Protection of Intellectual Properties, which protects trademarks and patents. The DRC is also a member of the Berne Convention that protects copyright, artistic works, and literary rights. The maximum protection that these conventions provide is 20 years for patents and 20 years, renewable, for trademarks, beginning from the date of registration. If it is not used within three years, a trademark can be cancelled. The DRC has not yet signed the WIPO Internet Treaties.

¶25. (U) The GDRC continues to undertake efforts to improve IPR-related legislation and build capacity to improve implementation and enforcement. The Minister of Justice has presented a law to the government that seeks to rectify the flaws of the existing 1986 IPR law. The law is still pending Parliamentary approval.

TRANSPARENCY OF THE REGULATORY SYSTEM

¶26. (U) Implementing a transparent regulatory system is still a challenge in the DRC. The GDRC is making some effort to improve the situation, including through appropriate legislation enacted by the parliament. Implementation and compliance, however, are still far from securing a complete legal and regulatory framework for the orderly conduct of business and the protection of investment. The GDRC authority on business standards, the Congolese Office of Control (OCC), oversees participation by foreign businesses.

¶27. (U) There are no formal or informal provisions by any private or public structure, in any business-related environment, used to impede foreign investment. Problems encountered within the GDRC

tend to be administrative and/or bureaucratic in nature since reforms and improved laws and regulations are often poorly or unevenly applied. Proposed laws and regulations are not published in draft format for public discussion and comments. Normally the only discussion occurs within the governmental or administrative entity that drafts them and at the parliament prior to a vote. The Congolese public, as well as foreign and domestic investors, do not receive an adequate opportunity to discuss or comment on these proposals.

¶28. (U) The IMF and the World Bank are working with the GDRC to bring the country into compliance with international business norms for accounting, legal, and regulatory systems. The World Bank's International Finance Corporation (IFC) has also launched a program to establish "Special Economic Zones" to help jumpstart investments. The GDRC has made progress towards joining the Organization for the Harmonization of Business Law in Africa (OHADA) to help the DRC to modernize its legal standards.

¶29. (U) In 2008, the DRC became a candidate country for the Extractive Industries Transparency Initiative (EITI), a multi-stakeholder effort to increase transparency in transactions between governments and companies in the extractive industries. Though the GDRC has taken some positive steps under EITI, including establishment of a National EITI Committee, implementation of necessary steps toward validation has been slow to date.

EFFICIENT CAPITAL MARKETS AND PORTFOLIO INVESTMENT
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¶30. (U) Efforts are being made to reinvigorate financial market and credit instruments. EconomicQrowth in the DRC since 2002 has increased the flow of money in the finished goods and raw materials market. Credit markets also are becoming more active, mainly in the commercial project and medium-term project sectors. All economic operators, foreign and domestic, have access to credit markets in the DRC without discrimination, as long as they can provide credible guarantees. Foreign investors, though, are more likely to benefit from this type of credit, since they are able to provide guarantees and collateral secured by foreign banks.

¶31. (U) The commercial banking system has undergone a full reorganization, although there is still only one bank branch for each 1.5 million Congolese. The BCC (Congolese Central Bank) and the IMF are working togeQer on a program of banking reforms. Two main objectives are to restore confidence in the commercial banks and to promote the intermediary role of the banking system in the DRC. There are currently 18 commercial banks, two specialized financial institutions, one savings bank, eighty-two co-operative banks, and fourteen micro-finance institutions, with a total of 200,000 accounts. The volume of savings increased from USD 97.2 million in 2001 to USD 934 million at the end of June 2008, a growth of 861 percent. Credits grew from USD 48 million to USD 576 million during the same period, an increase of over 1,000 percent.

¶32. (U) Business practices in the DRC are still at a fairly rudimentary level. Cross-shareholding and stable shareholding arrangements are not common in the DRC. There are occasional complaints about unfair competition between investors in profitable sectors such as mining and telecommunications.

POLITICAL VIOLENCE

¶33. (U) The DRC has suffered bouts of civil unrest and conflict for many years. Large-scale military looting in 1991 and 1993, for example, resulted in a significant loss of economic productive capacity. In addition, widespreadlooting and destruction associated with wars in he DRC from 1996-1997 and from 1998-2003 further damaged Congolese economic activity.

¶34. (U) Natonal and provincial governments were elected at th end of 2006 in the country's first democratic ntional elections in more than 40 years. Despitetechnical and logistical difficulties, coupled with isolated incidents of violence and intimidation,the elections were held in a largely calm and orerly fashion. The November 2007 Nairobi Commuique and the subsequent January 2008 conference n peace and security in Goma provide the foundation for

improved security in eastern DRC, though theful implementation of the agreements remains frgile. Recently, hostilities between the rebel CDP group and government forces have resumed. In adition to continuing instability in the eastern DC, strikes by civil servants and teachers over slary and benefit issues have occurred and contine to pose a potential source of social upheaval. ilitary and police personnel remain poorly paid and trained.

CORRUPTION

¶35. (U) U.S. businesses often comlain about corruption in the DRC, citing it as aprincipal constraint to doing business in the country. The Mobutu regime created a culture of corrution in the

DRC during more than 30 years of rul. This ingrained culture permeated the private,public, administrative, and business environment and has been difficult to root out. The DRC was rted as the tenth most corrupt country out of 180nations on Transparency International's 2008 Coruption Perception Index.

¶36. (U) In principle, here are legal provisions to fight and sanction orruption. The DRC is a member of the UN Anti-Corrption Convention and passed its own anti-corrupton law in 2004. Additional legislation includes he 2004 Money Laundering Act, under which the DR cooperates with African and European crime-fightig organizations. Despite these reform efforts, hwever, bribery is still routine in public and private business transactions, especially in the areas of government procurement, dispute settlement, and taxation.

¶37. (U) Bribery is illegal in the DRC and in principle it is investigated and prosecuted. The law calls for imprisonment and fines for both parties to the bribery no matter the circumstances. However, law enforcement remains a challenge in this area.

BILATERAL INVESTMENT TREATIES

¶38. (U) The United States and the DRC (then-Zaire) signed a Bilateral Investment Treaty (BIT) in 1984 that entered into force in
¶1989. This treaty guarantees reciprocal rights and privileges to each country's investors. The BIT provides for binding third-party arbitration in the event of an investment expropriation dispute.

¶39. (U) Germany, France, Belgium, Italy, South Korea, South Africa, and China (PRC) have signed bilateral investment agreements with the DRC. Lebanon, Ivory Cost, and Burkina Faso have negotiated, but not yet signed, bilateral investment treaties with the DRC.

OPIC AND OTHER INVESTMENT INSURANCE PROGRAMS

¶40. (U) The U.S. Overseas Private Investment Corporation (OPIC), which provides political risk insurance and project financing to U.S. investors and non-governmental organizations, ceased operations in the DRC for a time following the events of 1991. Since the establishment of the transitional government in June 2003, OPIC has granted three political risk insurance contracts in 2004, another in 2005, and is currently reviewing additional applications by American-owned companies. In March 2006, the DRC signed an accord with OPIC that will expedite the process of obtaining political risk insurance and financing.

¶41. (U) The DRC is a member of the World Bank's Multilateral Investment Guarantee Agency (MIGA), which offers insurance on new foreign investments to protect against foreign exchange losses, expropriation, and civil unrest. Recently, MIGA agreed to provide insurance to a mining concern in Katanga province. The GDRC is negotiating now for complete resumption of the MIGA program, which would allow for investment insurance in other sectors of the economy. The DRC is also a member of the African Trade Insurance Agency, which also provides political risk insurance.
¶42. (U) The projected annual exchange rate for the purpose of the 2009 DRC national budget is 580 CF/USD. The average annual rate for 2007 was 500 CF/USD. The exchange rate was (estimate) 600 CF/USD at the end of December 2008. The U.S. Embassy purchases local Congolese currency at the official rate for payroll and

administrative needs. The exchange rate had been stable (FC 560/USD) over the first half of 2008, but began to depreciate rapidly as a result of fiscal pressures from the continuing conflict in eastern DRC and a drop in revenues from lower international commodities prices due to the global financial crisis.

LABOR

¶43. (U) The DRC's large urban population provides a ready pool of available labor, including a significant number of high school and university graduates, a few of whom have studied at American universities. Employers cannot, however, take diplomas at face value. Skilled industrial labor is in short supply and must often be trained by individual companies.

¶44. (U) The GDRC sets regional minimum wages for all workers in private enterprise, with the highest pay scales applied in the cities of Kinshasa and Lubumbashi. Wages have not kept pace with the DRC's rate of inflation. While most foreign employers pay higher wages than the official minimum wage, the average Congolese worker has had to cope with falling real wages for over a decade.

¶45. (U) The country's labor legislation was modified by the October 2002 Labor Code, which is in compliance with the conventions and recommendations of the International Labor Organization. The code provides for tight control of labor practices and regulates recruitment, contracts, the employment of women and children, and general working conditions. Strict labor laws can make termination of employees difficult. The code also provides for equal pay for equal work without regard to origin, sex, or age. The new code formally permits a woman to gain employment outside of her home without her husband's permission.

¶46. (U) Employers must cover medical and accident expenses. Larger firms are required to have medical staff and facilities on site, with the obligations increasing with the number of employees. Mandated medical benefits are a major cost for most firms. Employers must provide family allowances based on the number of children, and paid holidays and annual vacations, based on the years of service. Employers must also provide daily transportation for their workers or pay an allowance in areas served by public transportation. Outside the major cities, large companies often assist by providing infrastructure, such as roads, schools and hospitals. Many labor regulations have been only sporadically enforced in recent years. The Ministry of Labor must grant permission for staff reductions. Generous pension and severance packages are required by the labor code.

FOREIGN TRADE ZONES / FREE PORTS

¶47. (U) The DRC does not have any areas designated as free trade zones or have any free ports. The DRC is a member of the Southern African Development Community (SADC) and the Common Market of Eastern and Southern Africa (COMESA), but has not yet joined either the COMESA or SADC free trade areas (FTAs).

FOREIGN DIRECT INVESTMENTS STATISTICS

¶48. (U) Obtaining reliable statistical data on foreign direct investment (FDI) in the DRC remains a challenge. There are two sources: the Central Bank (BCC) and the National Agency for Investment Promotion (ANAPI). At the time of writing this report, the 2008 figures were not yet available.

¶49. (U) BCC statistics are based on funds reported to the bank from actual investment projects underway, and are more accurate than those of ANAPI. These figures, however, may not capture all FDI flowing in the DRC; therefore, the quality of the BCC data is undetermined. Actual FDI amounts are probably higher than the BCC figures shown here. For the last three years, BCC has published the following totals:

FDI (in USD million)

	2006	2007	2008
Total	304	720	256 (estimates at the end of November 2008)

ANAPI registers data are obtained from proposals by potential foreign investors. Figures related to 2008 are related to the 11 months of the fiscal year 2008. They summarize approved projects in services, manufacturing sector, the food sector, pharmaceuticals, forestry and agriculture, and infrastructure. The bulk of investments are oriented towards services (telecommunications, health, and housing), representing almost 60 percent of investments reported by ANAPI.

FDI (in USD million)

	2006	2007	2008
Services	1,246	812,460	750.66
Infrastructure		35	70.45
Food		10	66.66
Pharmaceuticals		4	0.00
Beverages/Brewery		0	0.00
Agriculture/Forestry		29	231.25
Manufacturing	131	54,738	152.72
Total	171,455	867,198	1,271.76

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